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COURT FEE 4 Rs. भारत INDIA चार रुपये FOUR RUPEES

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Single Bench (Criminal)

BIBHUTI PRASAD

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IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL No.1417/94

APPELLANT : Laxmi Narayan Son of Bhagwat Prasad Jaiswal, aged about 29 years, Resident of Purani Basti, Katghora, Lower Division Clerk, Tahsil Office, Katghora, Bilaspur.

-Versus-

RESPONDENT : The State of M.P.

APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1417/1994

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

LAXMINARAYAN

Vs.

STATE OF MADHYA PRADESH (NOW STATE OF CHHATTISGARH)

Post for orders: today

Sd/-
Dilip Raosaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1417/1994

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

LAXMINARAYAN

Vs.

STATE OF MADHYA PRADESH (NOW STATE OF CHHATTISGARH)

PRESENT: -

Shri K.A. Ansari, learned Senior Advocate with Shri N.P.Kela, counsel for the accused-appellant.
Shri U.K.S.Chandel, P.L. for the State.

JUDGMENT
(Delivered on 10 -03-2006)

1. This appeal is directed against the judgment dated 10-11-1994 delivered by Smt. S.B. Minj, IInd Additional Judge to the Court of Sessions Judge, Bilaspur in Special Criminal Case No.06/1987 whereby the appellant was convicted under Section-161 of IPC and Under Section-5(1)(d) read with Section-5(1)(2) of Prevention of Corruption Act 1947 and was sentenced to rigorous imprisonment for 1 year and fine of Rs.500/- on both counts and in default of payment of fine to undergo simple imprisonment for 2 & ½ months on both counts.

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2. It is not disputed that on 05-07-1982, the appellant was posted as Clerk in Revenue Department, Tehsil Office-Katghora.

3. Briefly stated the prosecution story is that one Samaru Singh had made an application in the Court of Tehsildar, Katghora for allotment of tank situated on government land on lease. In this connection, he met the appellant who demanded bribe of Rs.100/- and asked Samaru Singh to meet Tehsildar. On 04-07-1982, complainant met the Tehsildar who told him that if he gives Rs.2,000/- to the appellant, his work will be done. However, Samaru could not arrange for Rs.2,000/-. He got an application Ex.P-8 drafted through scribe Krishna Kumar Pandey PW-6 and submitted it to the Special Police Establishment, Bilaspur. A trap was organized. Samaru PW-1 furnished two currency notes of Rs.50/- each. After application of phenolphthalein powder to the notes, Samaru was directed to hand over the notes to the appellant and to give a signal. Accordingly, the trap party left for Tehsil Office-Katghora. Tehsildar Shri A.K.Verma PW-2, Deputy Superintendent of Police G.K.~~Mishra~~ Tiwari PW-10, Head Constable Brij Bihari Mishra, PW-7 and Krishna Kumar Pandey PW-6 accompanied Samaru Singh PW-1 to the Tehsil Office-Katghora . As planned Samaru PW-1

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handed over two notes of Rs.50/- each to the appellant which the appellant received and kept in his full pant pocket. Upon receiving signal, Deputy Superintendent of Police Shri G.K. ~~Mishra~~ Tiwari PW-10 caught hold of the hands of the appellant which were washed in the solution of Sodium Carbonate. The solution changed the colour to light pink. The two notes of Rs.50/- each were also washed in the solution of Sodium Carbonate. The solution changed the colour to pink. The two notes were seized from the appellant vide seizure memo Ex.P-3. Dehati Nalishi was recorded vide Ex.P-10. The seized currency notes of Rs.50/- each and the solution of Sodium Carbonate were sent to Forensic Science Laboratory, Sagar vide memo Ex.P-13 and Ex.P-14. Vide report Ex.P-16, it was opined by Forensic Science Laboratory, Sagar that washing from the pant, washing of the currency notes and the hand wash of the appellant were positive for the test of Sodium Carbonate. Sanction was accorded vide Ex.P-17 for prosecuting the appellant under Section-161 of IPC and Section-5(1)(d) & 5 (1)(2) of the Prevention of Corruption Act 1947 by the State government.

4. Prosecution was launched against the appellant. The appellant abjured the guilt, pleaded innocence in defence and led no evidence. The prosecution examined as many as 11 witnesses. The trial Court relying upon

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the evidence led by the prosecution convicted and sentenced the appellant as aforesaid in para-1.

5. Shri K.A. Ansari, learned Senior Advocate for the appellant has assailed the conviction of the appellant on the ground that the evidence led by the prosecution failed to establish the guilt under Section-161 of IPC and Sections-5(1)(d) & Section-5(1)(2) of the Prevention of Corruption Act 1947 . It was contended that the testimony of the complainant Samaru Singh PW-1 did not establish the factum of demand or acceptance of the bribe by the appellant. It was further argued that the mastermind of the trap ~~court~~ to wit scribe Krishna Kumar Pandey PW-6 had falsely implicated the appellant. It was further contended that the evidence led by the prosecution did not rule out the possibility that the currency notes were accepted by the appellant as an amount of Takabi for which the appellant was about to give receipt. Tehsildar Shri Anil Kumar Verma PW-2 had also stated in para-11 that receipt book was lying on the table of the appellant. On the other hand, Shri U.K.S.Chandel, learned Panel Lawyer argued in support of the impugned judgment.

6. Having heard rival contentions, I have perused the record. The complainant Samaru Singh PW-1 at whose instance, the trap is alleged to have been organized

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stated that a revenue case pending in the Court of Tehsildar, Katghora and the Officer had demanded Rs.100/- which he had kept on the table of the Officer. After doing so, he set there for an hour and thereafter went out. There is not even an iota of material in his testimony which would go to show that the appellant had made any demand of bribe from him or that he had tendered two currency notes of Rs.50/- each to the appellant which were accepted and kept inside the full pant pocket of the appellant. This witness was not declared hostile by the prosecution. The statement of Samaru Singh PW-1 thus demolishes the very edifice of the prosecution case.

7. Krishna Kumar Pandey PW-6 is the scribe who had prepared the complaint Ex.P-1 and got thumb impression of Samaru Singh affixed thereon. He had admitted in para-5 that he had arranged a trap in 10-11 cases and intended that the Tehsildar and the Clerk both should be trapped. In para-6, he has further contended that D.S.P. Shri G.K.Tiwari PW-10 had asked phim to write the application. This clearly goes to show that the complaint Ex.P-8 was ~~the~~ mastermind ed ~~of the~~ by D.S.P. Shri G.K.Tiwari PW-10 and scribe Krishna Kumar Pandey PW-6. Samaru Singh PW-1 is an illiterate person and it appears that he was simply a pawn for fulfilling the evil designs of Shri Krishna Kumar Pandey PW-6.

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8. Shri Krishna Kumar Pandey PW-6 has admitted in para-4 that although he had accompanied Samaru Singh to the Tehsil Office yet he remained in the jeep and had no knowledge as to what transpired in the Tehsil Office after the trap was organized. In cross-examination para-7 this witness has stated that the demand for bribe was made few days prior to the making of the application Ex.P-8 on 05-07-1982 whereas Ex.P-8 shows that the demand was made by the Teshsildar on 04-07-1982. It also shows that Tehsildar had asked Samaru Singh PW-1 to give Rs.2,000/- to the Clerk. However, Krishna Kumar Pandey PW-6 has admitted in para-7 that this portion ("B" to "B")of the complaint was erroneously written.

9. The proceedings in Revenue Case No.186 vide Ex.P-12 shows that these proceedings were drawn on the complaint of Samaru Singh that one Kisun was exploiting the poor tribals. There is no prayer for allotment of any tank on lease. It further shows that the last date of hearing was 26-06-1982 and Samaru Singh was asked to submit a copy of his complaint on 09-07-1982 which was the next date. If at all, a demand of Rs.100/- was made by the appellant, it would have been either on 26-06-1982 when Samaru Singh appeared before him or prior to that. It does not appeal to reason that the complainant would come to

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Krishna Kumar Pandey PW-6 on 05-07-1982 to request him to organize a trap. This inference is fortified by the testimony of Samaru Singh. This creates a serious dent in the prosecution case and renders the prosecution story doubtful that the appellant had demanded bribe from Samaru Singh or that Samaru Singh had requested for arranging a trap, vide Ex.P-8. It appears that in furtherance of the evil design of Krishna Kumar Pandey PW-6 a false complaint Ex.P-8 was drafted by him, upon which thumb impression of Samaru Singh was got affixed.

10. Kripal Singh PW-4, Clerk in Tehsil Office, Katghora has stated in para-3 that in the windows of the room where the appellant sat, carbon paper had been pasted on the glasses and nobody could peep in from the outside. He has also admitted that during the proceedings he was not present. He also deposed that receipt book which was seized, was the current receipt book. Mohit Ram PW-3 has stated that he had taken some Takabi loan and had given some money to Samaru Singh and asked him to bring receipt thereof. Later, on being asked Samaru Singh told him that the work got spoiled. This finds corroboration from the testimony of Tehsildar Anil Kumar Verma PW-2 who has stated that a receipt book was found on the table of the appellant. A defence was laid by the accused-appellant in the cross-

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examination of D.S.P. G.K.Tiwari, PW-10 that receipt book had been taken out from the rack. This witness however denied that the appellant had said that he was about to make a receipt for the amount given by Samaru. In view of the facts and circumstances of this case, it cannot be ruled out that Samaru Singh had given Rs.100/- to the appellant towards Takabi loan of Mohit Ram PW-3.

11. Tehsildar Anil Kumar Verma PW-2 has stated in para-10 that immediately after receiving the signal from Samaru Singh, he went inside with D.S.P. G.K.Tiwari PW-10 caught hold of the hands of the appellant and thereafter the appellant took out the notes from his pocket. This testimony is sharply contradicted by the D.S.P. G.K.Tiwari PW-10 by stating that Tehsildar was not present during the whole proceeding. In his entire testimony, D.S.P. G.K.Tiwari PW-10 did not state that Anil Kumar Verma PW-2 was present during the trap proceedings.

12. Having thus considered the evidence led by the prosecution in its entirety, the following points emerge :-

(A) There is no evidence to show that the appellant had demanded a bribe of Rs.100/- from Samaru Singh PW-1.

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(B) Samaru Singh PW-1 did not support the prosecution story at all and was not declared hostile. His testimony completely negatived the story of demand and acceptance of bribe by the appellant.

(C) Mohit Ram PW-3 deposed that he had given some money to Samaru Singh for payment of Takabi loan and asked him to bring the receipt. The testimony of Anil Kumar Verma PW-2 and the statement in para-9 by G.K.Tiwari PW-10 also did not rule out this possibility that the appellant was about to give a receipt for the money given to him by Samaru Singh.

(D) There is absolutely no evidence to show that the appellant had accepted an amount of Rs.100/- from Samaru Singh PW-1 as bribe.

(E) The presence of Anil Kumar Verma PW-2 at the time of acceptance of currency notes by the appellant is rendered doubtful in view of the testimony of G.K.Tiwari PW-10.

(F) The testimony of G.K.Tiwari PW-10 that he saw and heard conversation from the window is also rendered unreliable in view of the admission by Kripal Singh PW-4, Clerk in Tehsil Office that the glasses of all the windows had carbon paper pasted on it and no one could peep in from out side.

(G) It cannot be ruled out that the trap was the mastermind of Krishna Kumar Pandey PW-6 who to further his evil designs used Samaru Singh, PW-1 an illiterate person as a Pawn.

(H) The possibility that the appellant had accepted Rs.100/- from Samaru Singh

towards Takabi loan and was about to give receipt for the same, while he was caught by D.S.P. G.K.Tiwari PW-10 cannot be ruled out.

13. In view of the above facts and circumstance of the case, the conviction of the appellant under Section-161 of IPC and Section-5(1)(d) & Section-5 (1)(2) of the Prevention of Corruption Act. 1947 and the sentence awarded thereunder deserves to be set aside.

14. In the result, the appeal is allowed. The conviction of the appellant under Section-161 of IPC and Section-5(1)(d) & Section-5 (1)(2) of the Prevention of Corruption Act, 1947and the sentence awarded thereunder are set aside. The appellant is acquitted. Fine, if paid, shall be refunded to the appellant.

Sd/-
Dilip Raosaheb Deshmukh
Judge